

GEORGE F. MANNING

ATTORNEY AND COUNSELOR AT LAW
SAN ANTONIO, TEXAS 78216

10586
RECORDATION NO. Filed 1425

JUL 3 1979 -2 20 PM

July 2, 1979

INTERSTATE COMMERCE COMMISSION

Ms. Joseph Lee

Interstate Commerce Commission
12th and Constitutional Ave., N.W.
Washington, D. C. 20423

10586
RECORDATION NO. Filed 1425

JUL 3 1979 -2 20 PM

No. 9-124AC85
Date JUL 3 1979
Fee \$ 60.00
ICC Washington, D. C.

Dear Ms. Lee:

INTERSTATE COMMERCE COMMISSION

In accordance with the provisions of Section 20c of the Interstate Commerce Act and Section 1116 of Title 49 of the Code of Federal Regulations, there is submitted herewith for filing and recordation a Security Agreement and a Bill of Sale of dump rail cars used or intended for use in connection with interstate commerce. Please note that the Security Agreement covers 25 new dump rail cars as are hereinafter described, and 10 used dump rail cars as are hereinafter described. The Bill of Sale covers only the 25 new dump rail cars. The enclosed instruments are described as follows:

1. Three (3) executed originals of a Security Agreement dated July 2, 1979, by and between Texas Commerce Bank--San Antonio, as Secured Party, and RailTex, Inc., as Debtor; and
2. Three (3) executed originals of a Bill of Sale dated June 28TH, 1979, between Ortner Freight Car Company, as Seller, and RailTex, Inc., as Buyer.

The 25 new dump rail cars described in the Security Agreement and the Bill of Sale are described as follows:

Twenty-Five (25) New "Rapid Discharge" TM Self-Clearing Bottom Dump Rail Cars, manufactured by Ortner Freight Car Company, Model No. OC-5025 (100-ton), Specification No. EX-279, having AAR Mechanical Designation HTS, and AAR Car Type Code K340 with cubic capacity of 2300 cubic feet. Cars are marked TRAX (WRRC) 1050 through 1074, both inclusive.

The Bill of Sale covers only the 25 new dump rail cars above described.

* Also enclosed is cashier's check in the amount of \$60.00 for payment of the recordation fee.

The address of the Debtor, RailTex, Inc., is Suite 206, 4901 Broadway, San Antonio, Texas 78209; and the address of the Mortgagee, Texas Commerce Bank--San Antonio, is 512 Highland Boulevard, San Antonio, Texas 78210.

* The 10 used dump rail cars described in the Security Agreement are as follows:

Ten (10) Used, Open-top hopper cars having AAR Mechanical Designation HT, AAR Car Type Code H150, having road numbers TRAX 110-119, inclusive. These cars are 70-ton capacity, 2608 cubic feet capacity.

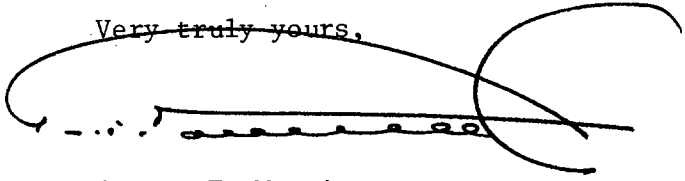
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I.C.C.
OPERATION DIV.

C. G. Kessler

Ms. Joseph Lee
Page 2
July 2, 1979

Please return an original counterpart of each of the enclosed instruments, with filing data noted thereon, to Mr. Philip E. Nelson, Senior Vice-President, Texas Commerce Bank--San Antonio, Post Office Box 10250, San Antonio, Texas 78210. If you need additional information with regard to these instruments or this transaction, please contact the undersigned. Thank you for your attention to this matter.

Very truly yours,

A large, stylized handwritten signature in dark ink, featuring a prominent loop on the right side and a horizontal line with small, repeating marks underneath.

George F. Manning

GFM/acc

Enclosures

10586

RECORDATION NO. Filed 1425

TEXAS COMMERCE BANK--SAN ANTONIO JUL 3 1979 -2 20 PM

INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT--HOPPER CARS

RailTex, Inc., a Texas corporation, whose principal office is Suite 206, 4901 Broadway, San Antonio, Texas 78209 (hereinafter called "Debtor"), and Texas Commerce Bank--San Antonio, a Texas banking association, having its principal office at 512 Highland Boulevard, San Antonio, Texas 78210 (hereinafter called "Secured Party"), agree as follows:

SECTION I. CREATION OF SECURITY INTEREST

Debtor hereby grants to Secured Party a security interest in the collateral described in Section II of this Security Agreement to secure performance and payment of all obligations of Debtor to Secured Party under that certain note of Debtor, payable to the order of Secured Party, of even date herewith in the original principal sum of \$857,500.00, and all renewals, extensions, refundings, and modifications thereof. The security interest created in this Security Agreement in addition secures any and all indebtednesses of Debtor to Secured Party of every nature whatsoever, whether created heretofore or hereafter, primary or secondary, until such indebtednesses are fully paid and until the security interest created herein is released by Secured Party. The aforesaid is hereinafter called "Indebtedness."

SECTION II. COLLATERAL

The Collateral of this Security Agreement shall hereby be referred to as Equipment ("Equipment") as defined in this Section II, or as the Collateral ("Collateral"):

A. Equipment shall mean: (A and B below)

New Cars

Twenty-Five (25) New "Rapid Discharge" TM Self-Clearing, Bottom Dump Rail Cars, manufactured by Ortner Freight Car Company, Model No. OC-5025 (100-ton), Specification No. EX-279, having AAR Mechanical Designation HTS, and AAR Car Type Code K340 with cubic capacity of 2300 cubic feet. Cars are marked TRAX (WRRRC) 1050 through 1074, both inclusive.

B. Used Cars

Ten (10) Used, Open-top hopper cars having AAR Mechanical Designation HT, AAR Car Type Code H150, having road numbers TRAX 110-119, inclusive. These cars are 70-ton capacity, 2608 cubic feet capacity.

C. The Collateral shall include the Equipment and all additions and accessions thereto, and all right to receive and collect all rentals, liquidated damages,

proceeds of sale, all per diem mileage, or other payments now or hereafter to become payable under leases permitted hereby or with respect to such Equipment and all accounts, chattel paper, and general intangibles with respect thereto.

The inclusion of proceeds in this Security Agreement does not authorize Debtor to sell, dispose of, or otherwise use the Equipment in any manner not specifically authorized by this Agreement.

SECTION III. PAYMENT OBLIGATIONS OF DEBTOR

- A. Debtor shall pay to Secured Party the Indebtedness in accordance with the terms of the agreements evidencing the Indebtedness and in accordance with the terms of this Security Agreement.
- B. Debtor shall pay to Secured Party, on demand, all expenses and expenditures, including reasonable attorneys' fees and other legal expenses incurred or paid by Secured Party in exercising or protecting its interests, rights, and remedies under this Security Agreement, plus interest thereon at the rate of ten percent (10%) per annum.
- C. Subject to the provisions of Section VIB(1) of this Security Agreement, Debtor shall pay immediately, without further notice, the entire unpaid Indebtedness of Debtor to Secured Party, upon Debtor's default under Section V of this Security Agreement, unless such default is fully cured within fifteen (15) days immediately following the issuance of notice of default under Section VIB(1) of this Security Agreement.

SECTION IV. DEBTOR'S WARRANTIES, REPRESENTATIONS, AND AGREEMENTS

- A. No Interstate Commerce Commission filing or financing statement or other filing covering the Collateral or its proceeds is on file in any public office, except for the security interest granted in this Security Agreement.
- B. Debtor will promptly notify Secured Party in writing of any addition, change, and/or discontinuance of its address as shown at the beginning of the Security Agreement and/or its name or its identity.
- C. Debtor shall pay or shall cause to be paid prior to delinquency all taxes, charges, liens, and assessments against the Collateral, and upon Debtor's failure to do so, Secured Party, at its option, may pay any of them and shall be the sole judge of the legality or validity thereof and the amount necessary to discharge the same; provided, however, that Secured Party will not pay any such tax, charge, lien, or assessment so long as Debtor at its own expense is contesting in good faith and with due diligence any such taxes,

charges, liens, and assessments asserted against the Collateral, provided that the proceedings brought in such contest shall suspend or stay the collection of such taxes, charges, liens, or assessments, and neither the Collateral nor any part thereof shall be subjected to any sale, foreclosure, or forfeiture. Debtor agrees to reimburse Secured Party on demand for any payment made, or any expense incurred, by Secured Party pursuant to the foregoing authorization, plus interest thereon at the rate of ten percent (10%) per annum.

- D. Debtor will have and maintain or cause to be maintained at all times insurance with respect to all Equipment covering physical loss or damage from any cause whatsoever (subject to such exclusions as are standard in such insurance of the type generally in use), in the amount satisfactory to Secured Party. Such insurance shall be written by companies satisfactory to the Secured Party, and the insurance policies shall also contain a standard mortgagee's endorsement providing for payment of any loss to Secured Party. All policies of insurance shall provide for at least ten (10) days' written cancellation notice to Secured Party. All drafts or instruments of any kind evidencing payment under any such insurance policies which come into the possession of Debtor shall be immediately delivered to Secured Party. Debtor shall furnish Secured Party with certificates or other evidence satisfactory to Secured Party of compliance with the foregoing provisions. Secured Party may act as attorney-in-fact for Debtor in obtaining, adjusting, settling, and cancelling such insurance and endorsing any drafts drawn by insurers of the Collateral and shall apply any proceeds of such insurance which may be received by it in payment on account of the obligations secured hereby, whether due or not.

E. The Equipment:

- (1) The Equipment will be used primarily for business use and for leasing to responsible and credit-worthy third parties approved by Secured Party, unless Secured Party consents in writing to another use.
- (2) The Equipment will not be misused or abused, wasted or allowed to deteriorate, except for the ordinary wear and tear of its intended primary use, as described in Section IVE(1) above, and will not be used in violation of any statute or ordinance or as part of a unit-train.
- (3) The Equipment will not be sold, transferred, or disposed of by Debtor or be subjected to any unpaid charge, including rent and taxes, or to any subsequent interest of a third person voluntarily created or suffered by Debtor, except any one or more leases referenced in Section IVE(1) above, unless Secured Party consents in advance in writing to such sale, transfer, disposition, charge, or subsequent interest. In the event of sale, transfer, or disposition of any one or more units of Equipment, the Secured Party shall re-lease such sold, transferred, or disposed unit

from the Collateral, and shall remove its security interest therein upon payment by Debtor to Secured Party of a sum of money determined by Secured Party, said payment to be applied as a payment of principal on the then last maturing installments of principal on Indebtedness.

- F. Debtor shall, at its expense, do, make, procure, execute, and deliver all acts, things, writings, and assurances as Secured Party may at any time reasonably require to protect, assure, or enforce its interests, rights, and remedies created by, provided in, or emanating from this Security Agreement.
- G. Debtor shall sign and execute alone or with Secured Party any Financing Statement or other document or procure any document, and pay all connected costs, necessary to protect the security interest under this Security Agreement against the rights or interests of third persons.
- H. Debtor will not lend, rent, lease, or otherwise dispose of the Collateral or any interest therein except as authorized in this Security Agreement or in writing by Secured Party, and Debtor shall keep the Collateral, including the proceeds from any disposition thereof, free from unpaid charges, including taxes, and from liens, encumbrances, and security interests other than that of Secured Party.

SECTION V. EVENTS OF DEFAULT

Debtor shall be in default under this Security Agreement upon the happening of any of the following events or conditions (herein called an "Event of Default"):

- A. Debtor's failure to pay when due any Indebtedness secured by this Security Agreement, either principal or interest.
- B. Default by Debtor in the punctual performance of any of the obligations, covenants, terms, or provisions contained in or referred to in this Security Agreement or in any note secured hereby.
- C. Any warranty, representation, or statement contained in this Security Agreement, or made or furnished to Secured Party by or on behalf of Debtor in connection with this Security Agreement, or to induce Secured Party to make a loan to Debtor proves to have been false in any material respect when made or furnished.
- D. Loss, theft, substantial damage, or destruction to or of any material part of the Collateral; provided, however, that if and to the extent that the Secured Party releases such lost, stolen, damaged, or destroyed part of the Collateral pursuant to Section IVD of this Security Agreement, such loss, theft, substantial damage, or destruction shall not operate as a default hereunder.

- E. Sale (except as authorized in this Security Agreement) or encumbrance of any material part of the Collateral, or the making of any levy, seizure, or attachment thereof.
- F. Debtor's liquidation, dissolution, termination of existence, insolvency, or business failure; the appointment of a receiver of all or any part of the property of Debtor; an assignment for the benefit of creditors by Debtor; the calling of a meeting of creditors of Debtor; or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Debtor or any guarantor, surety, or endorser for Debtor.
- G. Any statement of the financial condition of Debtor submitted to Secured Party by Debtor proves to be false in any material respect.

SECTION VI. SECURED PARTY'S RIGHTS AND REMEDIES

A. Rights exclusive of an Event of Default:

- (1) Secured Party may inspect the Collateral and Debtor's books and records pertaining to the Collateral from time to time, and Debtor shall assist Secured Party in making any such inspection.
- (2) Secured Party may call at Debtor's location or place or places of business at reasonable intervals to be determined by Secured Party and, without hindrance or delay, inspect, audit, check, and make copies of and extracts from the books, records, journals, orders, receipts, correspondence, and other data relating to the Collateral or to any transaction between Debtor and Secured Party, and Debtor shall assist Secured Party in making any such inspection.
- (3) At its option, Secured Party may discharge taxes, liens, or security interests or other encumbrances at any time levied or placed on the Collateral; may pay for insurance on the Collateral; and may pay for the maintenance and preservation of the Collateral; provided, that Debtor may contest in good faith any assessed taxes, charges, liens, and assessments as provided in Section IVC above. Debtor agrees to reimburse Secured Party on demand for any payment made or any expense incurred by Secured Party pursuant to the foregoing authorization, plus interest thereon at the rate of ten percent (10%) per annum.

B. Remedies in the Event of Default:

- (1) Upon the occurrence of an Event of Default, and at any time thereafter, Secured Party may, upon fifteen (15) days' written notice of default to Debtor, declare all obligations secured hereby immediately due and payable and shall have the rights and remedies of a Secured Party under

the Uniform Commercial Code of Texas, and as otherwise permitted by law, and in addition thereto and cumulative thereof, the following rights: the right to sell, lease, or otherwise dispose of any or all of the Collateral, and the right to take possession of the Collateral, and for that purpose, Secured Party may enter upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom; Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold in a recognized market, Secured Party will send Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other disposition thereof is to be made. The requirement of sending reasonable notice of sale shall be met if such notice is mailed, postage prepaid, to Debtor at the address designated at the beginning of this Security Agreement at least five (5) days before the time of sale or disposition. Expenses of retaking, holding, preparing for sale, selling, or the like shall include Secured Party's reasonable attorneys' fees and legal expenses, and Debtor agrees to pay such expenses, plus interest thereon, at the rate of ten percent (10%) per annum upon fifteen (15) days' prior written notice from Secured Party. Debtor shall remain liable for any deficiency. Nothing in this paragraph shall prevent Debtor from curing any curable default prior to the expiration of fifteen (15) days immediately following the issuance of notice of default by Secured Party, but unless all existing defaults have been fully cured as of the end of such fifteen (15) day period, Secured Party may proceed forthwith, without further notice of default, to exercise its rights and remedies referenced hereinabove.

- (2) Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.
- (3) Secured Party may execute, sign, endorse, transfer, or deliver in the name of Debtor notes, checks, drafts, or other instruments for the payment of money and receipts, certificates of origin, applications for certificates of title, or any other documents necessary to evidence, perfect, or realize upon the security interest and obligations created by this Security Agreement.
- (4) In protecting, exercising, or assuring its interests, rights, and remedies under this Security Agreement, Secured Party may receive, open, and dispose of mail addressed to Debtor and execute, sign, and endorse notes, checks, drafts, and other instruments for the payment of money, certificates of title, or other evidences of payment, shipment,

or storage for any form of Collateral or proceeds on behalf of and in the name of Debtor, or any other documents necessary to evidence, perfect, or realize upon the security interest and obligations created by this Security Agreement.

- (5) Secured Party may at any time demand, sue for, collect, or make any compromise or settlement with reference to the Collateral as Secured Party, in its sole discretion, chooses.
- (6) Secured Party may notify any one or more of Debtor's lessees of Equipment or the account debtors or obligors of any accounts, chattel paper, negotiable instruments, or other evidences of indebtedness remitted by Debtor to Secured Party as proceeds, or in which Secured Party may have a security interest under this Security Agreement, to pay Secured Party directly.
- (7) The remedies of Secured Party hereunder are cumulative, and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any of the other remedies of Secured Party.

SECTION VII. ADDITIONAL AGREEMENTS

- A. "Secured Party" and "Debtor" as used in this instrument include the successors, representatives, receivers, trustees, and assigns of those parties.
- B. The section headings appearing in this instrument have been inserted for convenience only and shall be given no substantive meaning or significance whatever in construing the terms and provisions of this instrument. Terms used in this instrument which are defined in the Texas Uniform Commercial Code are used with the meanings as therein defined.
- C. The law governing this secured transaction shall be that of the State of Texas in force at the date of this instrument.

EXECUTED this 2nd day of July, 1979.

DEBTOR:

RAILTEX, INC.

By: Bruce M. Flohr
BRUCE M. FLOHR, President

SECURED PARTY:

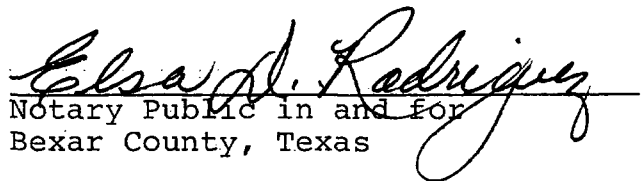
TEXAS COMMERCE BANK--SAN ANTONIO

By: Philip E. Nelson
PHILIP E. NELSON,
Sr. Vice-President

STATE OF TEXAS X
 :
COUNTY OF BEXAR X

BEFORE ME, the undersigned authority, on this day personally appeared BRUCE M. FLOHR, President of RAILTEX, INC., a Texas corporation, said person known to me to be a credible person and who, after being by me duly placed upon his oath, stated on his oath that he had read the foregoing instrument, and further stated that all of the facts set out therein are true and correct; whereupon, said party signed the foregoing instrument, and he further stated that he had signed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN under my hand and seal of office on this the 2nd day of July, 1979.


Notary Public in and for
Bexar County, Texas

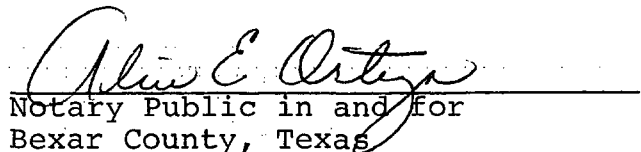
My commission expires:

April 19, 1980

STATE OF TEXAS X
 :
COUNTY OF BEXAR X

BEFORE ME, the undersigned authority, on this day personally appeared PHILIP E. NELSON, Sr. Vice-President of TEXAS COMMERCE BANK--SAN ANTONIO, a Texas banking association, said person known to me to be a credible person and who, after being by me duly placed upon his oath, stated on his oath that he had read the foregoing instrument, and further stated that all of the facts set out therein are true and correct; whereupon, said party signed the foregoing instrument, and he further stated that he had signed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said banking association.

GIVEN under my hand and seal of office on this the 2nd day of July, 1979.


Notary Public in and for
Bexar County, Texas

My commission expires: 01-31-81

ALICE E. ORTEGA
Notary Public Bexar County, Texas

Interstate Commerce Commission
Washington, D.C. 20423

7/3/79

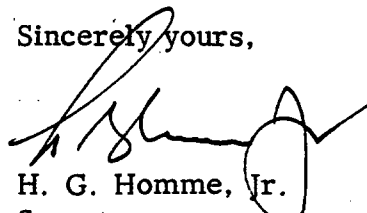
OFFICE OF THE SECRETARY

George F. Manning
El Hidalgo
110 Sprucewood
San Antonio, Texas 78216

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/3/79 at 2:20pm, and assigned recordation number(s). 10586 & 10586-A

Sincerely yours,



H. G. Homme, Jr.
Secretary

Enclosure(s)

SE-30
(3/79)